

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 202100012	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/01/2021 1:40 PM	Location of Incident: the Walgreens at 3012 3rd Avenue	Precinct: 40	18 Mo. SOL 7/1/2022	EO SOL 7/1/2022	
Date/Time CV Reported Sat, 01/02/2021 2:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 01/02/2021 2:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Mercedes	00884	961948	044 DET
2. PO Bismal Tineo	03560	962135	040 PCT
3. PO Harrynson Lopez	28226	955086	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Randy Zerling	04434	937786	040 PCT
2. PO Lisa Reyes	08946	957080	040 PCT
3. PO Eliana Hernandez	12634	961816	040 PCT
4. PO Jason Franquiz	09067	953881	040 PCT
5. PO Argenis Betanco	08617	963401	040 PCT
6. PO Anthony Picariello	10480	963697	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Mercedes	Abuse: Police Officer Jose Mercedes threatened to arrest § 87(2)(b)	
B.POM Jose Mercedes	Force: Police Officer Jose Mercedes used physical force against § 87(2)(b)	
C.POM Jose Mercedes	Discourtesy: Police Officer Jose Mercedes spoke discourteously to § 87(2)(b)	
D.POM Jose Mercedes	Off. Language: Police Officer Jose Mercedes made offensive remarks to § 87(2)(b) based on her perceived mental health.	
E.POM Jose Mercedes	Force: Police Officer Jose Mercedes hit § 87(2)(b) against a wall.	
F.POM Jose Mercedes	Abuse: Police Officer Jose Mercedes forcibly removed § 87(2)(b) to the hospital.	
G.PO Bismal Tineo	Off. Language: Police Officer Bismal Tineo made offensive remarks to § 87(2)(b) based on her perceived mental health.	
H.PO Harrynson Lopez	Off. Language: Police Officer Harrynson Lopez made offensive remarks to § 87(2)(b) based on her perceived mental health.	

Case Summary

On January 2, 2021, § 87(2)(b) filed this complaint with the CCRB via the agency's website.

On January 1, 2021, at approximately 1:40 p.m., § 87(2)(b) was at a Walgreens pharmacy located at 3012 3rd Avenue in the Bronx where PO Jose Mercedes of the 44th Precinct's Detective Squad was working a paid detail. PO Mercedes approached § 87(2)(b) and they argued about merchandise § 87(2)(b) had moved in the store. PO Mercedes allegedly told her he could arrest her (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Mercedes allegedly grabbed § 87(2)(b) and told her she needed to leave the store, eventually causing her to lose her footing and dragged her out (**Allegation B: Force**, § 87(2)(g)). PO Mercedes allegedly told § 87(2)(b) "I'm going to get you the fuck out of here... and get you taken to a psych center" (**Allegation C: Discourtesy**, § 87(2)(g)) (**Allegation D: Offensive Language**, § 87(2)(g)). Outside the Walgreens, PO Mercedes allegedly swung § 87(2)(b) into a wall (**Allegation E: Force**, § 87(2)(g)). PO Mercedes called for additional officers who arrived immediately, including Sgt. Randy Zerling, PO Bismal Tineo, and PO Harrynson Lopez of the 40th Precinct. § 87(2)(b) was handcuffed and removed to § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g)). PO Tineo and PO Lopez asked § 87(2)(b) if she was "crazy" (**Allegations G and H: Offensive Language**, § 87(2)(g)).

§ 87(2)(b) was issued criminal court summons § 87(2)(b) for disorderly conduct (BR 01).

Surveillance footage from the Walgreens was obtained via the company's legal department (BR 02). Body-worn camera (BWC) footage was obtained via the NYPD's Legal Bureau from the BWCs assigned to PO Argenis Betanco, PO Anthony Picariello, PO Lisa Reyes, PO Tineo, Sgt. Zerling, PO Jason Franquiz, PO Eliana Hernandez, and PO Lopez (BR 03).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Jose Mercedes threatened to arrest

§ 87(2)(b) Footage from a surveillance camera at the front entrance of the Walgreens addresses this allegation (BR 02). No durational timestamp is available on the footage's player and the actual timestamp will be referenced. At 1:35:20, § 87(2)(b) enters the Walgreens. She walks forward then makes a right and passes next to PO Mercedes before walking out of frame. He does not move, and she does not appear to attempt to make contact with him. At 1:35:44, PO Mercedes walks to a window by the entrance and does not appear to be paying attention to any customers. At 1:35:55, § 87(2)(b) approaches shelves directly next to PO Mercedes and firmly throws paper towels on a top shelf a few feet from his head. She walks away. PO Mercedes looks in her direction, then at the paper towels, and appears to follow § 87(2)(b) out of frame.

Footage from surveillance cameras inside the Walgreens further address this allegation (BR 02). No durational timestamp is available on the footage's player and the actual timestamp will be referenced. At 1:36:30, § 87(2)(b) is briefly visible on the left side of the frame. PO Mercedes enters the frame from the left side. He walks along the left edge of frame toward § 87(2)(b). At 1:37:20, § 87(2)(b) stands on the left edge of the frame and apparently speaks to the officer who stands left out of frame. At 1:37:52, § 87(2)(b) places paper towels on a cardboard box, gesticulates with her hands at her side, picks the paper towels up and places it down again, and takes a step toward PO Mercedes. At 1:38:09, PO Mercedes grabs her left sleeve with his right hand and begins to escort her out of the store.

§ 87(2)(b) entered the Walgreens to purchase paper towels and passed by PO Mercedes at the front of the store, who proceeded to follow her around the store (BR 04). § 87(2)(b) grabbed a

roll of paper towel and noticed PO Mercedes in the same aisle. She believed PO Mercedes was watching her under a suspicion she would shoplift or cause a commotion. To show she was not going to do so; she walked by PO Mercedes and placed the paper towels on a shelf in his line of sight so he could see it. There were many different types of items in the aisle, and it was generally disorganized. She aimlessly walked around various aisles in the store until PO Mercedes approached her. § 87(2)(b) asked if she could help him, and PO Mercedes asked her why she put the paper towels behind the detergent earlier. When § 87(2)(b) asked why he was asking, PO Mercedes told her she committed a criminal offense by putting the paper towels there because it caused a mess and made it difficult for employees to do their jobs. PO Mercedes told § 87(2)(b) he could arrest her. § 87(2)(b) asked him if she could be arrested for putting the paper towels on the wrong shelf, and PO Mercedes confirmed. § 87(2)(b) put out her arms in front of her body and told PO Mercedes to arrest her. PO Mercedes repeated he could arrest her, and she threatened to file a complaint against him. Due to the entire store being in disarray, § 87(2)(b) asked PO Mercedes if he was going to arrest all the customers in the Walgreens. PO Mercedes stated, “What you’re doing is causing a problem in here. I’m not going to arrest you, but I am going to force you out of here.” § 87(2)(b) spoke to PO Mercedes at a normal volume until he told her she could be arrested. She raised her voice, but never got to a loud or screaming volume. PO Mercedes never actually told her to leave to the store.

§ 87(2)(b) was § 87(2)(b) at the time of the incident (BR 05). She was at the front registers and first observed § 87(2)(b) when PO Mercedes was already walking with her toward the exit.

PO Mercedes was on paid detail at the Walgreens to deter disruptive customers and shoplifters (BR 06). PO Mercedes observed § 87(2)(b) enter and approach him at a quick pace. He believed she attempted to make contact with him by brushing or hitting one of her shoulders or elbows against his. § 87(2)(b) moved her shoulder/elbow slightly toward him as she passed. PO Mercedes stepped aside to avoid her. He did not say anything, just moved out of her way. PO Mercedes did not recall which side of his body she moved by. He moved toward a window in the front of the store and after about a minute, § 87(2)(b) approached him while holding paper towels. He described § 87(2)(b) as throwing the paper towels near his shoulder and face. He did not see any proper or reasonable purpose for her to do so. PO Mercedes believed § 87(2)(b) intended to make contact with him with her body when entering and with the paper towels. § 87(2)(b) ran down the front of the store, looked back after 15 feet, and gestured with her hand for PO Mercedes to come toward her. He followed and observed her down the aisle grabbing various items and dropping them on random shelves. She showed no interest in any product nor interest in purchasing anything. She moved five or six items before PO Mercedes told her to stop and asked her why she was doing that. § 87(2)(b) told him she could do whatever she wanted. PO Mercedes told her it was not nice or fair to the employees to do that and was making their day harder. § 87(2)(b) walked as she spoke with PO Mercedes and yelled that she could do whatever she wanted and asked what PO Mercedes “was going to do about it.” § 87(2)(b) was gesticulating with her hands. She yelled loud enough for most of the large store to hear here. There were approximately eight other customers in addition to several employees. PO Mercedes asked her to stop at least twice, and § 87(2)(b) stated no and continued moving items as she walked and talked to him. § 87(2)(b) asked, “What are you going to do?” PO Mercedes told her he could ask her to leave. § 87(2)(b) began to yell that she could do whatever she wants and was not breaking any laws. PO Mercedes explained that she was being disorderly and could be arrested or issued a summons due to her behavior. PO Mercedes stated § 87(2)(b) was causing a scene within the store by gesticulating and yelling and affecting other customers’ shopping experience. PO Mercedes did not recall if he told § 87(2)(b) he would arrest her but stated it was possible. He recalled telling her that he could issue her a summons. PO Mercedes wanted § 87(2)(b) to leave due to her disruptive behavior and did not want to issue her a summons.

§ 87(2)(b) was issued a summons for disorderly conduct for engaging in fighting or in

violent, tumultuous, or threatening behavior by PO Tineo after he observed § 87(2)(b) attempted to swing at PO Mercedes outside the Walgreens (BR 07).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, they engage in fighting or in violent, tumultuous, or threatening behavior; or they make unreasonable noise; or they create a hazardous or physically offensive condition by any act which serves no legitimate purpose. NYS Penal Law § 240.20 (BR 08).

§ 87(2)(g)
§ 87(2)(b) did not observe § 87(2)(b)'s conduct until she and PO Mercedes were exiting the store prior to this allegation. The video is inconsistent with § 87(2)(b)'s testimony, in that PO Mercedes did not initially follow her thus not providing a reason for her to place merchandise near his person. However, the video is also inconsistent with how forcefully PO Mercedes described § 87(2)(b)'s initial actions within the Walgreens. There is no audio in the available video that could depict § 87(2)(b)'s oral volume and there are no nearby customers at the time to gauge their reactions to § 87(2)(b)'s behavior. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation B – Force: Police Officer Jose Mercedes used physical force against § 87(2)(b)

Footage from a surveillance camera inside the Walgreens addresses this allegation (BR 02). No durational timestamp is available on the footage's player and the actual timestamp will be referenced. At 1:38:09, PO Mercedes grabs § 87(2)(b)'s left sleeve with his right hand and begins to escort her out of the store down an aisle out of view of the camera. § 87(2)(b) appears to walk voluntarily but jerks her arm as if trying to get out of his grasp. At 1:38:20, PO Mercedes is next depicting continuing to escort § 87(2)(b) out of the aisle in the background, toward the exit. § 87(2)(b) is on her feet and walking, facing forward, as PO Mercedes seems to be maintaining the same grasp. At 1:38:29, PO Mercedes and § 87(2)(b) slow down and stop. It is unclear why. At 1:38:36, as they continue walking a few more steps, § 87(2)(b) steps backward from PO Mercedes and jerks her arm away from his grasp. He maintains her grasp and § 87(2)(b) jerks more rapidly, but both continue walking to the exit.

Footage from a surveillance camera at the front entrance of the Walgreens addresses this allegation (BR 02). No durational timestamp is available on the footage's player and the actual timestamp will be referenced. At 1:39:30, PO Mercedes and § 87(2)(b) enter the frame from the bottom-right. They are face-to-face. PO Mercedes holds both of § 87(2)(b)'s forearms. He walks forwards, sideways, then backwards while holding § 87(2)(b) as he walks her out of the store through the vestibule. At 1:39:40, PO Mercedes appears to pull § 87(2)(b) by her arms away from the entrance on the sidewalk. PO Mercedes stands just inside the vestibule. § 87(2)(b) walks directly toward him. At 1:39:43, PO Mercedes appears to use two hands to push § 87(2)(b)'s shoulders away from the store. She takes a step back, then steps forward again. PO Mercedes appears to hold her by her shoulders or arms as he takes steps backward into the vestibule. § 87(2)(b) walks forward into the vestibule. They appear to talk. At 1:40:05, § 87(2)(b) takes a step toward PO Mercedes. PO Mercedes again pushes § 87(2)(b) by her shoulders backward out of the store and she takes a couple steps back. She again walks toward PO Mercedes. He places his left arm and hand out toward § 87(2)(b) as if to block her from walking toward him inside the store. At 1:40:09, PO Mercedes lunges forward and pushes § 87(2)(b)'s shoulders with two hands. She takes a couple steps back. She appears to step forward or plant her feet on the sidewalk. PO Mercedes steps out of the store and grabs § 87(2)(b)'s shoulders. § 87(2)(b) writhes and lowers

her body as PO Mercedes grapples her. He moves her to the camera's right of the door on the sidewalk (exterior, left). He appears to hold her with her back against the building. At 1:40:30, PO Mercedes appears to take out a radio as he continues holding § 87(2)(b) with one hand. At 1:40:53, PO Mercedes lets go of § 87(2)(b) and steps backward away from her. She, PO Mercedes, and the male individual all appear to converse in front of the Walgreens. At 1:41:25, PO Mercedes takes a step backward inside the vestibule. § 87(2)(b) takes steps toward him. At 1:41:32, PO Mercedes appears to hold § 87(2)(b)'s right shoulder or arm. She turns around away from him. PO Mercedes appears to push her with both hands away from the Walgreens. § 87(2)(b)'s reaction is obstructed by his body. She walks back in front of PO Mercedes, and they appear to continue speaking.

Footage from an exterior surveillance camera at the front entrance of the Walgreens further addresses this allegation by depicting the same events with a clearer angle of § 87(2)(b) outside the store at the identical actual timestamps referenced above (BR 02).

§ 87(2)(b) stated PO Mercedes grabbed her left arm above her elbow with his right hand and told her he was going to force her out of the store. Face-to-face, § 87(2)(b) walked backward and placed her right hand between her arm and PO Mercedes' grip to attempt to get away. PO Mercedes used his left hand to grab her right arm and remove it from his right hand's grasp. He gripped both her forearms and guided her to walk backwards toward the exit. He lowered his grips and held her hands very strongly, "crushing them." Near the front of the aisle, § 87(2)(b) tripped backward on her or PO Mercedes' feet. PO Mercedes dragged her along the floor by her feet. She avoided completely falling but she was unable to regain her footing. He pivoted around her, maintaining his hold on her forearms, so that he walked sideways and backwards toward the exit. PO Mercedes walked through both sets of doors to the sidewalk outside the Walgreens with § 87(2)(b). PO Mercedes used his feet in a manner § 87(2)(b) did not recall to get her on the ground. She fell on her left hip area toward her back. PO Mercedes kept holding her forearms so bent downward over § 87(2)(b) when she fell. When he erected himself, § 87(2)(b) used the momentum to rise and regain her footing. PO Mercedes stood with his back to the store about a foot from the wall just to left of the door. § 87(2)(b) had freed one of her arms. PO Mercedes swung her around by her other arm. She collided with the wall on the left side of her body on her head near her temple and her hip. PO Mercedes let go of her arms and pressed the back of his body against hers to pin her against the wall. § 87(2)(b) felt pain where her body hit the wall. PO Mercedes pinned her chest and left side of her body against the wall as he faced away. They were back-to-back and he also held her with his legs, rear, and the backs of his arms.

§ 87(2)(b) first observed § 87(2)(b) walking in the middle of the store toward the exit with PO Mercedes. She heard § 87(2)(b) screaming, "Arrest me, just arrest me." They were not physically interacting until just near the exit, when § 87(2)(b) appeared to move her body as if to hit or move past PO Mercedes. § 87(2)(b) did not recall if § 87(2)(b) actually made contact with PO Mercedes. PO Mercedes grabbed § 87(2)(b)'s left arm and continued walking with her into the vestibule to outside. § 87(2)(b) grabbed him too and writhed her body as if to get away. PO Mercedes never dragged § 87(2)(b) and § 87(2)(b) was on her feet the whole time. She never saw PO Mercedes pull or push § 87(2)(b) lost sight of both once they entered the vestibule.

PO Mercedes told § 87(2)(b) multiple times to cease her conduct before telling her multiple times to leave. § 87(2)(b) stated she could do whatever she wanted and was not leaving. Due to her continued non-compliance, PO Mercedes grabbed one of her wrists. § 87(2)(b) used her other hand to grab his wrist and pull it away. PO Mercedes grabbed both wrists and began to guide her toward the exit. He and § 87(2)(b) mostly walked sideways and face-to-face until near the exit of the store. § 87(2)(b) was moving her body and trying to flail her arms throughout, briefly but successfully breaking PO Mercedes' grasp multiple times. § 87(2)(b) pushed him approximately five times on his arms and chest, when she was able to break free. PO Mercedes did not recall § 87(2)(b) ever falling on the ground. He did not recall any attempts by himself to take

her down. PO Mercedes wanted to get her medical attention due to her erratic and violent behavior. PO Mercedes never squeezed her hands or hold her body in any way to cause bruising. Just before the vestibule area, PO Mercedes stopped and held one or none of § 87(2)(b)'s wrists as he radioed for an additional unit. He did not recall if he provided any information about what was going on. § 87(2)(b) tried to push by him multiple times She was using her arms and body. He described this as her most violent behavior. He grabbed both her wrists again and pulled her out on the sidewalk. Once § 87(2)(b) was out of the store, PO Mercedes stood in the doorway. She charged multiple times at PO Mercedes with her whole body and raising her arms. PO Mercedes stepped back and put his arms out to block her and avoid getting struck by her. He stated it was possible § 87(2)(b) lost her footing near the entrance at this point. § 87(2)(b) launched her weight at PO Mercedes in the doorway and tried to grab and overpower him. She grabbed his arms and waist areas withing an unsafe distance to his firearm.

§ 87(2)(b) provided photographs she and a friend took a day after the incident that depicts alleged bruising to her upper arm (BR 09).

When a member of service must gain compliance or control of an uncooperative subject, the member should comply with reasonableness guidelines outlined by factors included but not limited to the nature of the circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat, and whether the subject is actively resisting custody NYPD Patrol Guide 221-01 and 221-02 (BR 10-11)

§ 87(2)(g)

§ 87(2)(b) She is depicted on her feet the entire time and appears to initially walk forward and largely freely with PO Mercedes. It also depicts her making several attempts to return inside the Walgreens to which she did not testify. PO Mercedes' testimony was largely consistent with the video. Neither § 87(2)(b) nor PO Mercedes described his behavior as excessive to removing an uncooperative subject from the Walgreens, which is corroborated by the video evidence. § 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy: Police Officer Jose Mercedes spoke discourteously to § 87(2)(b).

Allegation D – Offensive Language: Police Officer Jose Mercedes made offensive remarks to § 87(2)(b) based on her perceived mental health.

No available video evidence captured audio at the time of these allegations.

§ 87(2)(b) stated that while PO Mercedes was still grabbing her in one of the Walgreens' aisles, they cursed at each other. She told him, "Get your fucking hands off me." He stated, "I'm going to get you the fuck out of here," and she replied, "For what? Get your fucking hands off me." He repeatedly told her, "Something doesn't look right with you" and "I need to get out of here." Once at the front of the store, PO Mercedes leaned toward one of her ears and stated quietly, "Going to get you the fuck out of here and make sure you get sent to a psych center," and then went back to yelling statements like, "You can't go throwing stuff around here, got to get out." At this point, § 87(2)(b) believed that PO Mercedes was trying to make her look mentally ill, so she stopped yelling.

PO Mercedes denied using the word "fuck." He did not recall telling her, "Something doesn't look right with you," or that he would make sure she got sent to a "psych center." At some point, he did tell her that she would go to the hospital to be examined due to her behavior.

§ 87(2)(b) did not recall hearing a conversation between PO Mercedes and § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Force: Police Officer Jose Mercedes hit § 87(2)(b) against a wall.

Footage from an exterior surveillance camera at the front entrance of the Walgreens addresses this allegation (BR 02). No durational timestamp is available on the footage's player and the actual timestamp will be referenced. At 1:40:14, PO Mercedes places the front of § 87(2)(b) against a wall/window next to the Walgreens entrance. He does not appear to do so with excessive force or hard enough to cause pain or injury. His body moves slightly but he appears relatively still and in control of § 87(2)(b). His feet move as if to stabilize himself and he appears to make a call on a phone with his right hand.

§ 87(2)(b) stated that once back on her feet outside the Walgreens, PO Mercedes stood with his back to the store about a foot from the wall just to left of the door. § 87(2)(b) had freed one of her arms. PO Mercedes swung her around by her other arm. She collided with the wall on the left side of her body on her head near her temple and her hip. PO Mercedes let go of her arms and pressed the back of his body against hers to pin her against the wall. § 87(2)(b) felt pain where her body hit the wall. PO Mercedes pinned her chest and left side of her body against the wall as he faced away. They were back-to-back and he also held her with his legs, rear, and the backs of his arms. PO Mercedes hurt § 87(2)(b) by pinning her and her head hurt from the earlier collision.

PO Mercedes stated that once § 87(2)(b) launched her weight at PO Mercedes and tried to grab and overpower him. He grappled with her. She was grabbing his forearm, waist, hip, bicep, arm. He stated her arms in relation to his firearm was not safe. He was grabbing her wrist to keep her out of the store. She continued charging at PO Mercedes and trying to get back in the store. PO Mercedes did not recall swinging her or moving her into the wall outside the entrance. PO Mercedes did not recall doing anything to cause her to hit her hip.

§ 87(2)(b) was not able to observe the incident once PO Mercedes and § 87(2)(b) went into and past the vestibule of the store.

PO Mercedes' actions outside the Walgreens as depicted in the surveillance footage were not as § 87(2)(b) alleged. He did not cause her to hit any walls or to make contact in such a manner as she alleged. § 87(2)(g)

Allegation F – Abuse of Authority: Police Officer Jose Mercedes forcibly removed § 87(2)(b) to the hospital.

Footage from PO Reyes' BWC addresses these allegations (BR 03). The durational timestamp will be referenced. At 1:00, PO Reyes arrives on scene with other officers including PO Tineo and PO Lopez. § 87(2)(b) argues with PO Mercedes about her conduct in the Walgreens and if she was acting disorderly or not. At 1:50, she steps directly in front of PO Mercedes and raises her left hand and moves it to just in front of his face as she states, "You pushed me." It does not appear she makes contact with his face and PO Mercedes grabs or blocks her left forearm with this right hand. He moves his right hand to § 87(2)(b)'s shoulder and pushes her away. She takes a step backward and multiple officers including PO Reyes grab her upper torso and begin to handcuff her.

Footage from Sgt. Zerling's BWC also addresses these allegations (BR 03). The durational timestamp will be referenced. At 1:10, § 87(2)(b) raises her hand toward PO Mercedes, and she is handcuffed by other officers. At 1:50, PO Mercedes appears to categorize § 87(2)(b) as an "EDP," or an emotionally disturbed person, to PO Betanco and he tells PO Tineo, who is escorting § 87(2)(b) that she is an "EDP." Sgt. Zerling is facing PO Mercedes and PO Betanco and provides no

guidance or directives at this point. PO Mercedes explains to Sgt. Zerling and other officers what occurred in the Walgreens prior to their arrival on scene. At 3:10, PO Reyes explains to another officer that she was willing to arrest § 87(2)(b) for disorderly conduct but since PO Mercedes called it in and wanted her treated as an emotionally disturbed person then that is what officers will do. At 3:25, Sgt. Zerling orders PO Tineo to also issue § 87(2)(b) a summons for disorderly conduct, as well as removing her as an emotionally disturbed person. At 6:15, officers escort § 87(2)(b) to an ambulance and she is transported to a hospital.

§ 87(2)(b) heard PO Mercedes call for additional officers. When an ambulance and additional officers arrived, PO Mercedes stepped away from her and stated she had been throwing things in the store. § 87(2)(b) told officers he was lying. An officer told her she needed to calm down and placed her in handcuffs behind her back. PO Mercedes stated she needed to be taken to the hospital for a psychiatric evaluation. EMTs and officers escorted § 87(2)(b) to § 87(2)(b).

PO Mercedes described § 87(2)(b) as an emotionally disturbed person who needed an evaluation due to her behavior. He first believed this when she threw the initial paper towels and ran away. Her additional abnormal behavior was continuing to stay in the store with no intention of shopping, yelling, non-compliance, and violent behavior against him. He did not recall who called for an ambulance or how it was decided she was going to the hospital. At some point when removing § 87(2)(b) from the Walgreens, PO Mercedes told her that she would go to the hospital to be examined due to her behavior.

Sgt. Zerling provided testimony consist with the video evidence with the following additions and exceptions (BR 12). Sgt. Zerling was the 40th Precinct patrol supervisor at the time of the incident and responded to PO Mercedes' call for additional officers. He described § 87(2)(b) as raising her left hand and bringing it down in front of PO Mercedes, as if to strike him in the chest. PO Mercedes blocked her with his right arm, and she struck his right arm. After listening to an unidentified male civilian witness who had been in the store and PO Mercedes, PO Reyes and possibly other officers described § 87(2)(b) as an emotionally disturbed person. Sgt. Zerling agreed due to her irrational behavior within the Walgreens which became violent she was escorted out after multiple requests to stop. It did not sound to him as if she was shopping but created dangerous conditions for other shoppers by causing debris on the ground. Another officer whom he did not recall had called for an ambulance as soon as he arrived on scene. Once Sgt. Zerling heard other officers describe the subject as an emotionally disturbed person, he told the officers to remove her to hospital as well as to issue her a summons. He believed the ambulance was requested prior to his directive. Sgt. Zerling was the highest-ranking officer on scene.

Event information for ICAD #21010111916, detailing radio communications from PO Mercedes' call for additional officers at 1:41 p.m., shows PO Mercedes as describing § 87(2)(b) as an emotionally disturbed person in his initial call (BR 13). Emergency medical services (EMS) were automatically dispatched at that point. At 2:02 p.m., § 87(2)(b) was removed by EMS to § 87(2)(b).

Medical records from § 87(2)(b) detail § 87(2)(b)'s medical assessment and care on the incident date (BR 14). The Pre-Hospital Care report, prepared by transporting Emergency Medical Technician (EMT) § 87(2)(b), arrived on scene at 1:47 p.m. and left with § 87(2)(b) at 1:52 p.m. The narrative notes that she denied doing anything and refused to answer questions. However, Walgreens staff stated she was going around the store acting erratic and throwing things. She arrived at the Emergency Department at 2:02 p.m., was admitted at 2:47 p.m., and was discharged at 3:18 p.m. The Chief Complaint was listed as a Psychiatric Evaluation for § 87(2)(b) since she was acting erratic in Walgreens. The Emergency Department found that a medical service evaluation of § 87(2)(b) was required. § 87(2)(b) reported that she felt racially profiled and followed by PO Mercedes while shopping at the Walgreens. Officers reported that she was verbally aggressive. She declined any medical examination, and medical staff found that any subsequent examination was not necessary. She was offered psychiatric services and social work

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 18).
- PO Mercedes has been a member-of-service for five years and has been a subject in four other CCRB complaints and 17 other allegations, none of which were substantiated (see officer history). § 87(2)(g)
- Sgt. Zerling has been a member-of-service for five years and has been a subject in three other CCRB complaints and three other allegations, none of which were substantiated (see officer history). § 87(2)(g)
- PO Tineo has been a member-of-service for five years and has been a subject in four other CCRB complaints and nine other allegations, none of which were substantiated (see officer history). § 87(2)(g)
- PO Lopez has been a member-of-service for eight years and has been a subject in five other CCRB complaints and three other allegations, none of which were substantiated (see officer history). § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of January 19, 2022, a FOIL request was submitted with the New York City Office of the Comptroller for any record of a Notice of Claim being filed in regards this to complaint and the response will be added to the case file upon receipt (BR 19).

§ 87(2)(b)

Squad: 11

Investigator: Benjamin Shelton SI Benjamin Shelton 4/19/22
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 04/19/22
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date